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UN Security Council Hearing: Bosnian Serbs Cite "Illegal" Foreign Intervention as Destabilizing Factor

NEW YORK - At Monday's United Nations Security Council (UNSC) hearing on Bosnia, clear differences of opinion emerged in assessment of the stability and progress of Bosnia-Herzegovina. In a report to the UNSC, Bosnian Serbs countered statements by the internationally-appointed High Representative (HR) Valentin Inzko, who administers Bosnia, with evidence of significant progress made this year by Bosnia's elected officials. The report also concludes that progress has been achieved when Bosnian elected officials were able to deliberate without intervention by the HR and "certain foreign states."

The Bosnian Serb report cited controlling law found in the Dayton Agreement which defines the powers of the HR, and highlighted several instances where the HR acted outside the scope of the Dayton powers. Bosnian Serbs consider these actions to be illegal. They assert that international administration is no longer needed, and its continuance only serves to shield Sarajevo politicians from accountability, which inhibits needed reforms. They conclude that UN administration is a destabilizing influence and seek for Bosnia to be governed by "the Serb, Croat, and Bosniak populations of Bosnia."

Their report was marked in its contrast to Inzko's testimony, who characterized the political situation as "bleak." He claimed that Bosnia's lack of progress was not the fault of his administration of the territory, but rather the consequences of "political differences, and obstructionism."

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SECOND REPORT OF REPUBLIKA SRPSKA TO THE SECURITY COUNCIL ON THE SITUATION IN BOSNIA AND HERZEGOVINA

1. In light of serious recent developments that undermine democracy, human rights and the rule of law in Bosnia and Herzegovina ("BiH"), the Government of Republika Srpska ("Government") respectfully submits this Second Report to the United Nations Security Council to assist the Council in its upcoming deliberations on BiH. The Government provides this Report as a party to the agreements comprising the Dayton Accords, including the Agreement on the Civilian Implementation of the Peace Settlement set forth in Annex 10 thereto ("Annex 10").

2. The Government reiterates its request that the Security Council and the broader international community proceed in a manner that respects the sovereignty of BiH, international legal agreements, including the Dayton Accords, and other principles of international law and the rule of law. In addition, the Government wishes to call the Security Council's attention to the urgent need for the cessation of further violations of international law and basic human rights committed by the High Representative and his office ("OHR"). This should be accomplished through (1) the OHR's closure and, until then, its adherence to its limited mandate established by the parties to Annex 10; and (2) the urgent establishment of a mechanism whereby civilians who have been harmed by human rights violations of the High Representative can seek legal recourse.

I. Executive Summary

3. In the Government's first Report to the Council in February of this year, the Government highlighted the uninterrupted peace and significant progress that has been made in BiH since the end of the war nearly fourteen years ago, including the important progress made through compromise among the key political leaders initiated in November 2008 in Prud.

4. Some reports lately have portrayed BiH as sliding backwards or in crisis. But the record of BiH's recent progress, attested to by independent observers, disproves this faulty portrayal. As explained in Section II of this Report, BiH has continued to make important progress in many areas, including the Brčko District constitutional amendment, visa liberalization, EU integration, the economy, human rights (except for actions of the High Representative targeting citizens), and security and crime prevention.

5. An even more groundless claim is that there is a serious threat of a resumption of hostilities in BiH. Section III of this Report shows that this claim is refuted by the informed, independent assessments of international military and security officials. These assessments all attest that the security situation in BiH is stable and secure. The current situation does not constitute a threat to international peace and security, and thus there is no longer a factual or legal basis for the Security Council to act under Chapter VII of the UN Charter. Nor can false assertions of a danger of renewed hostilities be grounds for continuation of the OHR or accepting the continued use of the Bonn Powers in contravention of law.

6. In its Report to the Council in February 2009, the Government warned of the possibility that BiH's progress could be impeded by certain actors in the international community

attempting to use the appointment of a new High Representative to implement a dangerous policy of “muscular intervention” into the governance and domestic affairs of BiH:

The Government wishes to express its grave concern that the actions of some within the international community could undermine the foundation for long-term peace and stability of BiH. Some within the international community seek to impose a structure and system of government that is in direct contravention of the federal structure and system agreed to by the parties in the Dayton Accords—a structure and system that enabled the three constituent Peoples to reach agreement in Dayton and that is the basis for durable peace and stability among them in the future. Rather than support the efforts of BiH’s elected leaders to work through the processes established in the BiH Constitution, those wishing direct foreign intervention intend to achieve their objectives by the exercise of peremptory powers against the democratically elected authorities and constitutional institutions of BiH. They justify such actions by attempting to create a false perception that the situation within BiH is “in crisis.”

7. Unfortunately, as described in Section IV of this Report, this damaging policy has been aggressively implemented since the appointment of Ambassador Valentine Inzko as the High Representative. The new High Representative has exercised his peremptory powers 20 times during the first six months of his tenure, almost seven times as often as his predecessor exercised them during the previous six months. Moreover, the nature of his decrees has been highly and unnecessarily intrusive. His decrees have included, *inter alia*, declaring invalid a set of conclusions approved by the Republika Srpska National Assembly (“RSNA”), removing and banning officials from public positions without any due process, and jeopardizing significant property rights of the Republika Srpska and its citizens.

8. And this month, leaked OHR reports revealed that the OHR has been secretly investigating and alleging criminal activity by numerous prominent government, political, religious and business leaders within BiH. The OHR has reportedly delivered this information to a number of international diplomats and missions.

9. Although BiH officials have continued to move BiH forward, progress could be stalled by continued foreign intervention into domestic political and economic affairs—by the threat and use of the Bonn Powers or other coercive means. Such actions are fundamentally destabilizing and disruptive of the consensus building and reform efforts of BiH’s own authorities.

10. In addition to hampering BiH’s progress, these actions are unlawful. Section V of this Report examines the legal authority of the High Representative and the Peace Implementation Council (“PIC”) and explains why their actions routinely exceed their legal mandates. Neither the Dayton Accords nor the UN Security Council has given the PIC authority to intervene in BiH’s domestic affairs or international relations. The High Representative’s narrow mandate, which is described clearly in Annex 10 of the Dayton Accords, does not include sweeping authorities such as the power to enact laws or remove democratically elected officials. Moreover, the Security Council has never assigned additional powers to the High Representative.

11. Section VI of this Report explains the Government's response to the damaging and unlawful actions of the High Representative and certain members of the PIC Steering Board. The Government is renewing its call for the termination of the position of High Representative. Until such time, the Government, acting according to resolutions of the RSNA, cannot accept as valid under international law any further attempts of the High Representative to use the Bonn Powers.

12. Additionally, the Government has called upon the Presidency of the EU and the Council of Europe's Commissioner for Human Rights to support the creation of an independent international tribunal to provide redress to individuals whose human rights have been violated by the High Representative's use of the Bonn Powers. To date, the High Representative has successfully blocked all existing legal forums in BiH and the European Court of Human Rights such that injured individuals have no remedy whatsoever.

13. As explained in Section VII of this Report, despite the serious attempts to undermine sustainable progress, the Government is committed to continue working to improve the lives of all BiH citizens, including through accession to the EU. Issues of EU accession, including constitutional reform, are not matters of peace implementation and thus are not within the High Representative's mandate; nor are they under the authority of the PIC.

14. The Government will continue striving to improve governance through reforms aimed at achieving greater efficiency and functionality. However, constitutional reform in the name of "efficiency" and "functionality" cannot be a cover for a hidden agenda to transform BiH's Constitution contrary to the fundamental principles of governance established by treaty at Dayton. Efficiency and functionality can be achieved in a decentralized, federal state—as in many other countries.

15. Constitutional reform should generally follow the sequence set out by the PIC Steering Board in June 2009 and the Presidency of the EU in October 2009.. Namely, constitutional reform, which the EU has stated is *not* required for application for EU membership, should be taken up after the closure of the OHR, which the EU has stated *is* required for application for EU membership.

16. The failure of the recent meetings at Butmir is a lesson in how not to achieve reform. At Butmir, certain members of the PIC Steering Board—with the assistance of the OHR—tried to impose on BiH political leaders a package of drastic and destabilizing changes to the BiH Constitution. All but one of the political leaders present rejected the package. The Butmir process failed because it (1) proposed unwelcome constitutional restructuring that would raze the Dayton architecture that protects the vital interests of BiH's Constituent Peoples and makes BiH a viable state; (2) sought to circumvent the transparent and legal process required to change the Constitution; and (3) attempted to add constitutional reform onto the PIC's 5+2 Agenda as another condition for OHR closure. This attempt to satisfy some Bosniak politicians' desire for a unitary state before the OHR's closure undermined the hosts' credibility as neutral mediators.

17. As discussed in Section VIII, the way forward for BiH must be based on full commitment and adherence to the following principles:

- International law and rule of law must be adhered to by all parties, including the international community and especially the High Representative.
- The High Representative (and peremptory powers) must come to an end; a legal remedy must be made available for individuals whose rights have been violated by the High Representative.
- BiH must be treated as an equal and fully sovereign state free from international intervention in its domestic affairs.
- Constitutional reform must be accomplished through a transparent, democratic and constitutional process in order to achieve legitimate and enduring reform.
- The accession process to the EU and Euro-Atlantic structures—including so-called “reforms” in the name of “efficiency” and “functionality”—must not be a guise for fundamental restructuring of the Constitution that removes safeguards set forth in the Dayton Accords that brought about and ensure peace. The rights and competencies of the Entities as established in the Dayton Accords must be respected.

18. The Government believes that BiH can accelerate legitimate and sustainable political progress. The international community’s contribution should be to respect the rule of law, BiH sovereignty, and the federal structure mandated by the Dayton Accords. Without unlawful interference by the High Representative and PIC Steering Board, BiH’s leading parties can negotiate in good faith, develop consensus, and build a better life for BiH’s citizens.

Constitutional Amendments Proposed by Republika Srpska Prime Minister Milorad Dodik

1. To increase the number of deputies in the House of Representatives.
2. To increase the number of deputies in the House of Peoples.
3. That deputies for the House of Peoples are elected from the entire territory of BiH in such a way that they are appointed by entity parliaments, and in a structure where, for example, from 6 Serbs for the BiH House of Peoples 5 would be elected by Republika Srpska, and 1 by Serb Deputy Club in Federation's parliament.
4. We would accept 16 months rotation period in the state Presidency, instead of 8 month stints we have now.
5. To clearly determine a structure for protocol functions of Presidency's President and 2 deputy Presidents, who would rotate every 16 months, while all other foreign policy and defense issues would have to be the subject of a consensus.
6. To take away all budget decisions from Presidency and put them in jurisdiction of the Council of Ministers.
7. To move all financial agreements with different foreign financial institutions from Presidency to the Council of Ministers
8. To delete a constitutional provision which allows foreign nationals in the Constitutional Court.

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